

1 AN ACT relating to contingency fee legal personal service contracts.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 42.012 is amended to read as follows:

4 The secretary of the Finance and Administration Cabinet shall ***be appointed by the***  
5 ***Governor subject to Senate confirmation under KRS 11.160. The secretary shall*** be the  
6 chief financial officer of the state and the adviser of the Governor and the General  
7 Assembly in financial matters, and shall at all times protect the financial interests of the  
8 state.

9 ➔Section 2. KRS 45A.695 is amended to read as follows:

10 (1) ***Notwithstanding any other statute to the contrary, this section shall apply to all***  
11 ***constitutional officers and executive branch agencies.***

12 ***(2)*** Except as provided in subsection ***(9)***~~*(8)*~~ of this section, no one shall begin work on  
13 a personal service contract entered into by any contracting body or incur  
14 expenditures under a tax incentive agreement until notification of the personal  
15 service contract or tax incentive agreement is filed with the committee. Each  
16 personal service contract shall have a cancellation clause not to exceed thirty (30)  
17 days notice to the contractee.

18 ***(3)***~~*(2)*~~ Each personal service contract, tax incentive agreement, and memorandum of  
19 agreement shall be filed with the committee prior to the effective date and shall be  
20 accompanied by a completed proof of necessity form as established by the  
21 committee by promulgation of an administrative regulation, or equivalent  
22 information if submitted electronically. The proof of necessity form shall document:

23 (a) The need for the service or benefit to the Commonwealth of the tax incentive  
24 agreement;

25 (b) For personal service contracts and memoranda of agreement, the  
26 unavailability of state personnel or the nonfeasibility of utilizing state  
27 personnel to perform the service;

- 1 (c) The total projected cost of the contract or agreement and source of funding;
- 2 (d) The total projected duration of the contract or tax incentive agreement;
- 3 (e) Payment information, in detail;
- 4 (f) In the case of memoranda of agreement or similar device, the reason for
- 5 exchanging resources or responsibilities; and
- 6 (g) Such other information as the committee deems appropriate.

7 ~~(4)~~~~(3)~~ Adequate notice of the need for a personal service contract shall be given by

8 the contracting body through a request for proposals. The request for proposals shall

9 describe the services required, list the type of information and data required of each

10 offeror, state the relative importance of particular qualifications, ~~and~~ include the

11 reciprocal preference for resident bidders required by KRS 45A.494, and be

12 approved by the secretary of the Finance and Administration Cabinet.

13 ~~(5)~~~~(4)~~ The head of the contracting body or his or her designee may conduct

14 discussions with any offeror who has submitted a proposal to determine the offeror's

15 qualifications for further consideration. Discussions shall not disclose any

16 information derived from proposals submitted by other offerors.

17 ~~(6)~~~~(5)~~ Award shall be made to the offeror determined by the head of the contracting

18 body, or his or her designee, to be the best qualified of all offerors based on the

19 evaluation factors set forth in the request for proposals and the negotiation of fair

20 and reasonable compensation, after submitting all evaluation and scoring

21 documents and any other information relating to the procurement to the

22 secretary of the Finance and Administration Cabinet for his or her approval. If

23 compensation cannot be agreed upon with the best qualified offeror and if proposals

24 were submitted by one (1) or more other offerors determined to be qualified,

25 negotiations may be conducted with the other offeror or offerors in the order of their

26 respective qualification ranking. In this case, the contract may be awarded to the

27 next best ranked offeror for a fair and reasonable compensation, after submitting all

1 evaluation and scoring documents and any other information relating to the  
2 procurement to the secretary of the Finance and Administration Cabinet for his  
3 or her approval. All determinations of the qualification rankings of offerors by the  
4 head of the contracting body or a designee of the officer based on evaluation factors  
5 set forth in the request for proposals shall be made in writing. Written  
6 documentation shall be maintained concerning the final results of negotiation with  
7 each vendor and reasoning as to why each vendor was chosen.

8 ~~(7)~~[(6)] The committee shall maintain a record or have readily accessible records of  
9 the date on which each personal service contract, tax incentive agreement, and  
10 memorandum of agreement was received and shall maintain or have access to  
11 electronic or paper files on all personal service contracts, tax incentive agreements,  
12 and memoranda of agreement. Except for records exempt from inspection under  
13 KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and  
14 memoranda of agreement shall be made available for public inspection.

15 ~~(8)~~[(7)] Payment on personal service contracts, tax incentive agreements, and  
16 memoranda of agreement submitted to the committee for approval shall not be  
17 made for services rendered or projects undertaken after committee disapproval,  
18 unless the decision of the committee is overridden by the secretary of the Finance  
19 and Administration Cabinet or agency head, if the agency has been granted  
20 delegation authority by the secretary of the Finance and Administration Cabinet. All  
21 personal service contracts, tax incentive agreements, and memoranda of agreement  
22 shall contain a provision that stipulates that payments on personal service contracts  
23 and memoranda of agreement shall not be authorized for services rendered after  
24 committee disapproval, unless the decision of the committee is overridden by the  
25 secretary of the Finance and Administration Cabinet or agency head, if the agency  
26 has been granted delegation authority.

27 ~~(9)~~[(8)] In the event of a governmental emergency as defined under KRS 45A.690,

1 work may begin prior to filing notification of the personal service contract with the  
2 committee, if the secretary of the Finance and Administration Cabinet or his  
3 designee determines that the time involved in the normal review process would be  
4 detrimental to the Commonwealth's ability to act or procure the services and the  
5 normal process will not accommodate the governmental emergency. Payment shall  
6 not be made until written notification and explanation of the reasons for this action  
7 are forwarded to the committee.

8 ~~(10)~~<sup>(9)</sup> If a governmental emergency exists as defined under KRS 45A.690 and work  
9 is authorized to begin on a personal service contract immediately, a copy of a  
10 statement, approved by the secretary of the Finance and Administration Cabinet or  
11 his designee, setting forth in detail the nature of the emergency shall be filed with  
12 the committee, along with a copy of the personal service contract.

13 ~~(11)~~<sup>(10)</sup> (a) No payment shall be made on any personal service contract unless the  
14 individual, firm, partnership, or corporation awarded the personal service  
15 contract submits its invoice for payment on a form established by the  
16 committee.

17 (b) Invoices shall be submitted every ninety (90) days, unless the personal service  
18 contract specifies a different submission time period.

19 (c) Separate invoices shall be submitted for each distinct matter covered by the  
20 personal service contract, and shall be signed by the individual responsible for  
21 that matter.

22 (d) Each invoice shall contain the following information:

- 23 1. A description of the matter covered by the invoice;
- 24 2. The date each service was performed;
- 25 3. A full description of each service;
- 26 4. The name and title of each individual who worked on the matter, and the  
27 time the individual spent on the matter;

- 1           5.    The subject matter and recipient of any correspondence;
  - 2           6.    A full description of any work product produced, designating the way in
  - 3                 which the work product is associated with the matter being invoiced;
  - 4           7.    The hourly rate for each individual working on the matter, and the total
  - 5                 charge for that individual for each matter invoiced;
  - 6           8.    An itemized list of all disbursements to be reimbursed by the state for
  - 7                 each matter invoiced;
  - 8           9.    The total charge for each matter;
  - 9           10.   The combined total for services and disbursements for the billing period;
  - 10          11.   The tax identification number of the entity awarded the personal service
  - 11                 contract; and
  - 12          12.   An indication on each invoice of whether or not the invoice is final.
- 13       (e)   The issuance of an invoice to the Commonwealth constitutes an affirmation
- 14                 by the individual, firm, partnership, or corporation awarded the personal
- 15                 service contract that the invoice truly and accurately represents work actually
- 16                 performed and expenses actually incurred.
- 17       (f)   The head of the contracting body shall approve the invoice, indicating that the
- 18                 charges in the invoice reflect the value of the work performed, and all
- 19                 recorded costs and disbursements were reasonably and necessarily incurred in
- 20                 connection with the matter invoiced.

21       ➔Section 3.   KRS 45A.705 is amended to read as follows:

- 22       (1)   There is hereby created a permanent committee of the Legislative Research
- 23                 Commission to be known as the Government Contract Review Committee. The
- 24                 committee shall be composed of eight (8) members appointed as follows: three (3)
- 25                 members of the Senate appointed by the President of the Senate; one (1) member of
- 26                 the minority party in the Senate appointed by the Minority Floor Leader in the
- 27                 Senate; three (3) members of the House of Representatives appointed by the

1 Speaker of the House of Representatives; and one (1) member of the minority party  
 2 in the House of Representatives appointed by the Minority Floor Leader in the  
 3 House of Representatives. Members shall serve for terms of two (2) years, and the  
 4 members appointed from each chamber shall elect one (1) member from their  
 5 chamber to serve as co-chair. Any vacancy that may occur in the membership of the  
 6 committee shall be filled by the appointing authority who made the original  
 7 appointment.

8 (2) On an alternating basis, each co-chair shall have the first option to set the monthly  
 9 meeting date. A monthly meeting may be canceled by agreement of both co-chairs.  
 10 The co-chairs shall have joint responsibilities for committee meeting agendas and  
 11 presiding at committee meetings. A majority of the entire membership of the  
 12 Government Contract Review Committee shall constitute a quorum, and all actions  
 13 of the committee shall be by vote of a majority of its entire membership. The  
 14 members of the committee shall be compensated for attending meetings, as  
 15 provided in KRS 7.090(3).

16 (3) Any professional, clerical, or other employees required by the committee shall be  
 17 provided in accordance with the provisions of KRS 7.090(4) and (5).

18 (4) **Notwithstanding any other statute to the contrary, this section shall apply to all**  
 19 **proposed personal service contracts, tax incentive agreements, and memoranda of**  
 20 **agreement entered into by constitutional officers and all executive branch**  
 21 **agencies. The** ~~All~~ proposed personal service contracts, tax incentive agreements,  
 22 and memoranda of agreement **shall be forwarded to** ~~received by~~ the Legislative  
 23 Research Commission **which** shall **submit them** ~~be submitted~~ to the committee to:

- 24 (a) Examine the stated need for the service or benefit to the Commonwealth of  
 25 the motion picture or entertainment production;
- 26 (b) Examine whether the service could or should be performed by state personnel,  
 27 for personal service contracts and memoranda of agreement;

- 1 (c) Examine the amount and duration of the contract or agreement; and
- 2 (d) Examine the appropriateness of any exchange of resources or responsibilities.
- 3 (5) If the committee determines that the contract service or agreement, other than an
- 4 emergency contract approved by the secretary of the Finance and Administration
- 5 Cabinet or his or her designee, is not needed or inappropriate, the motion picture or
- 6 entertainment production is not beneficial or is inappropriate, the service could or
- 7 should be performed by state personnel, the amount or duration is excessive, or the
- 8 exchange of resources or responsibilities are inappropriate, the committee shall
- 9 attach a written notation of the reasons for its disapproval or objection to the
- 10 personal service contract, tax incentive agreement, or memorandum of agreement
- 11 and shall return the personal service contract, tax incentive agreement, or
- 12 memorandum of agreement to the secretary of the Finance and Administration
- 13 Cabinet or his or her designee. The committee shall act on a personal service
- 14 contract, tax incentive agreement, or memorandum of agreement~~[submitted to the~~
- 15 ~~Legislative Research Commission]~~ within forty-five (45) days of the date received
- 16 **by the Legislative Research Commission.**
- 17 (6) Upon receipt of the committee's disapproval or objection to a personal service
- 18 contract, tax incentive agreement, or memorandum of agreement, the secretary of
- 19 the Finance and Administration Cabinet or his or her designee shall determine
- 20 whether the personal service contract, tax incentive agreement, or memorandum of
- 21 agreement shall:
- 22 (a) Be revised to comply with the objections of the committee;
- 23 (b) Be canceled and, if applicable, payment allowed for services rendered under
- 24 the contract or amendment; or
- 25 (c) Remain effective as originally approved.
- 26 (7) The secretary of the Finance and Administration Cabinet or his or her designee shall
- 27 notify the committee of the action taken on personal service contracts, tax incentive

1 agreements, and memoranda of agreement disapproved or objected to within ten  
 2 (10) days from the date the personal service contracts, tax incentive agreement, or  
 3 memoranda of agreement were reviewed by the committee.

4 (8) Contracting bodies, **including constitutional officers and all executive branch**  
 5 **agencies**, shall make annual reports to the committee not later than December 1 of  
 6 each year. The committee shall establish reporting procedures for contracting bodies  
 7 related to personal service contracts, tax incentive agreements, and memoranda of  
 8 agreement ~~submitted by the secretary of the Finance and Administration Cabinet or~~  
 9 ~~his or her designee~~.

10 ➔Section 4. KRS 45A.717 is amended to read as follows:

11 (1) The head of a contracting body, which includes constitutional officers **and all**  
 12 **executive branch agencies notwithstanding any statute to the contrary**, shall not  
 13 award a personal service contract for legal services that provides for payment by  
 14 contingency fee unless, prior to the award, the head of the contracting body  
 15 determines in writing:

- 16 (a) The contingency fee is both cost-effective and in the public interest;
- 17 (b) Sufficient and appropriate legal and financial resources do not exist within the
- 18 contracting body;
- 19 (c) The amount of time and labor required to perform the requested services;
- 20 (d) The novelty, complexity, and difficulty of the matter;
- 21 (e) The skill required to perform the requested services properly;
- 22 (f) The geographic area where the legal services are to be provided; and
- 23 (g) The experience desired for the particular kind of legal services to be provided.

24 (2) The head of the contracting body or his or her designee shall participate in  
 25 reviewing and evaluating the responses to the requests for proposals and discussions  
 26 with offerors.

27 (3) A contingency fee shall not exceed:



- 1 (a) Twenty percent (20%) of the amount recovered up to ten million dollars  
2 (\$10,000,000);
- 3 (b) Fifteen percent (15%) of the amount recovered between ten million dollars  
4 (\$10,000,000) and fifteen million dollars (\$15,000,000);
- 5 (c) Ten percent (10%) of the amount recovered between fifteen million dollars  
6 (\$15,000,000) and twenty million dollars (\$20,000,000); and
- 7 (d) Five percent (5%) of the amount recovered of twenty million dollars  
8 (\$20,000,000) or more.
- 9 (4) A contingency fee shall not exceed twenty million dollars (\$20,000,000), regardless  
10 of the number of actions or proceedings or the number of attorneys or law firms  
11 involved in the matter, and exclusive of any costs and expenses provided for by the  
12 contract and actually incurred by the legal services contractor.
- 13 (5) A contingency fee shall be payable only from money that is actually received  
14 pursuant to a judgment or settlement agreement, and any judgment or settlement  
15 funds shall be disbursed in accordance with KRS 48.005.
- 16 (6) During the contract period and any extension:
- 17 (a) The head of the contracting body or his or her designee shall retain control  
18 over the course and conduct of the case and shall retain veto authority over  
19 any decision made by the contract attorney;
- 20 (b) The head of the contracting body or his or her designee with authority over the  
21 contract shall:
- 22 1. Attend all settlement conferences;
- 23 2. Be personally involved in overseeing the litigation; and
- 24 3. Make recommendation to the secretary of the Finance and  
25 Administration Cabinet on any proposed settlement of the matter for  
26 which the contract was entered, with the secretary having~~Have~~  
27 exclusive decision-making power regarding any settlement~~of the~~

1                   ~~matter for which the contract was entered~~; and

2           (c) Any opposing party to the matter for which the contract was entered into may  
3           directly contact the head of the contracting body or his or her designee with  
4           authority over the contract, without having to notify the contract attorney.

5   (7) The Finance and Administration Cabinet shall develop a standard addendum to be  
6       added to each personal service contract for legal services to include the terms of this  
7       section.

8   (8) (a) Within five (5) business days after the contract award, the Finance and  
9       Administration Cabinet shall post on its Web site each personal service  
10      contract for legal services that provides for payment by contingency fee and  
11      the accompanying written determinations described in subsection (1) of this  
12      section. The contract and accompanying determinations shall remain on the  
13      Web site during the duration of the contract and any extension.

14      (b) Any payment of contingency fees shall be posted on the contracting body's  
15      Web site within fifteen (15) days after the payment of such contingency fees  
16      to the legal services contractor and shall remain posted on the Web site for at  
17      least three hundred sixty-five (365) days.

18   (9) (a) In addition to the information required of each contingency fee contract by the  
19       Kentucky Model Procurement Code and KRS 45A.695, a contractor awarded  
20       a personal service contract for legal services that provides for payment by  
21       contingency fee shall maintain detailed current records, including  
22       documentation of:

- 23           1. Expenses;
- 24           2. Disbursements;
- 25           3. Charges and credits;
- 26           4. Underlying receipts and invoices; and
- 27           5. Any other financial transactions that concern the attorney services

1 rendered under the contract.

2 (b) 1. All records described in this subsection shall become public records  
3 subject to KRS 61.870 to 61.884 after a judgment or agreement is  
4 entered in the case and all appeals have been exhausted, but shall not be  
5 public records until that time.

6 2. Any information that is subject to an evidentiary privilege and is  
7 contained within any record described in this subsection shall not be a  
8 public record. The privileged information shall be redacted before any  
9 public disclosure of the record.

10 (10) (a) The Finance and Administration Cabinet and the contracting body shall  
11 submit a joint report to the Government Contract Review Committee by  
12 September 1 of each year identifying all contingency fee contracts for legal  
13 services:

- 14 1. Awarded in the previous fiscal year;  
15 2. Active in the previous fiscal year, but awarded in prior fiscal years; or  
16 3. Concluded in the previous fiscal year.

17 (b) For each contract, the report shall include:

- 18 1. The written determinations made under subsection (1) of this section;  
19 2. Any determination made that the contract was not to be procured  
20 through the request for proposal process; and  
21 3. Any determination made that the contract may be entered into despite a  
22 finding of disapproval by the committee.

23 (c) In addition, the report shall describe:

- 24 1. The name of the attorney or law firm with whom the contract was made;  
25 2. The nature and status of the legal matter that is the subject of the  
26 contract;  
27 3. The name of the parties to the legal matter that is the subject of the

1 contract;

2 4. The amount of recovery, if any; and

3 5. The amount of the contingency fee paid, if any.

4 (11) The common law authority of any duly elected statewide constitutional officer is  
5 specifically abrogated to the extent it is inconsistent with the provisions of this  
6 section.

7 ➔Section 5. KRS 154A.120 is amended to read as follows:

8 (1) The corporation shall conduct all procurements in accordance with procedures  
9 which are not inconsistent with the provisions of KRS Chapter 45A, and this  
10 chapter, this chapter being deemed to control in the event that, and to the extent  
11 that, any provision in this chapter is expressly inconsistent with any provision of  
12 KRS Chapter 45A; or the corporation shall adopt administrative regulations  
13 establishing its procurement procedures. If the corporation elects to promulgate  
14 administrative regulations establishing its procurement procedures rather than  
15 conduct procurements in accordance with the provisions of KRS Chapter 45A, the  
16 corporation may include sections of KRS Chapter 45A as part of its administrative  
17 regulations. However, major lottery-specific procurements for personal service  
18 contracts shall not be subject to the requirements of KRS 45A.695~~(3)~~~~(2)~~(b), due to  
19 the unique operational activities conducted for state government by the corporation  
20 as recognized in KRS 154A.020. The corporation's procurement procedures or  
21 administrative regulations shall be designed to provide for the purchase of supplies,  
22 equipment, services, and construction items that provide the greatest long term  
23 benefit to the state, the greatest integrity for the corporation, and the best service  
24 and products, for the public.

25 (2) In its bidding and negotiation processes, the corporation may do its own bidding  
26 and procurement, or may utilize the services of the Finance and Administration  
27 Cabinet, or a combination thereof. The president of the corporation may, in lieu of

1 the secretary of finance, declare an emergency for purchasing purposes.